

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ANTHONY BUDZINSKI,

Plaintiff(s),

*-against-*THE ROMAN CATHOLIC DIOCESE OF BROOKLYN,
NEW YORK; and THE ROMAN CATHOLIC CHURCH OF
THE HOLY CROSS, IN THE BOROUGH OF QUEENS, IN
THE CITY OF NEW YORK,

Defendant(s).

Index No. _____

Summons

Date Index No. Purchased:

November 1, 2019

To the above named Defendant(s)

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK, 310 Prospect Park West, Brooklyn, Kings
County, New York; AND THE ROMAN CATHOLIC CHURCH OF THE HOLY CROSS, IN THE BOROUGH OF
QUEENS, IN THE CITY OF NEW YORK, 61-21 56th Road, Maspeth, Queens County, New York

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more defendant resides in Kings County, New York
which is located in Kings County, New York.

Dated: New York, New York

November 1, 2019

SIMMONS HANLY CONROY LLC

by 

Paul J. Hanly, Jr.

Attorneys for Plaintiff

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ANTHONY BUDZINSKI,

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW
YORK; and THE ROMAN CATHOLIC CHURCH OF THE
HOLY CROSS, IN THE BOROUGH OF QUEENS, IN THE CITY
OF NEW YORK,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Anthony Budzinski, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Roman Catholic Diocese of Brooklyn, New York and The Roman Catholic Church of the Holy Cross, in the Borough of Queens, in the City of New York, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in Kings County pursuant to CPLR 503 in that one or more of the Defendants reside in this County.

PARTIES

4. Plaintiff Anthony Budzinski ("Plaintiff") is an individual residing in Selden, Suffolk County, New York.
5. Defendant The Roman Catholic Diocese of Brooklyn, New York ("Diocese

of Brooklyn”) is a religious corporation organized pursuant to the New York Religious Corporations Law, with its principal office at 310 Prospect Park West, Brooklyn, Kings County, New York. The Diocese of Brooklyn is a Roman Catholic diocese. At all relevant times, the Diocese of Brooklyn created, oversaw, supervised, managed, controlled, directed and operated parishes in the Diocese of Brooklyn, including at all relevant times, The Roman Catholic Church of the Holy Cross, in the Borough of Queens, in the City of New York.

6. Defendant The Roman Catholic Church of the Holy Cross, in the Borough of Queens, in the City of New York, (“Holy Cross Parish”) is Roman Catholic parish within and under the authority of the Diocese of Brooklyn and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 61-21 56th Road, Maspeth, Queens County, New York. At all relevant times, the Diocese of Brooklyn created, oversaw, supervised, managed, controlled, directed and operated Holy Cross Parish.

FACTS COMMON TO ALL CLAIMS

7. In or about 1968, Father Adam F. Prochaski (“Father Prochaski”) was ordained a Roman Catholic priest. At all times relevant to the allegations set forth herein, Father Prochaski was assigned by Defendant Diocese of Brooklyn to serve as a priest of Holy Cross Parish.

8. Plaintiff and his family were parishioners of Holy Cross Parish. From approximately 1965 to 1973, when Plaintiff was approximately six to fourteen years of age, Plaintiff attended the Holy Cross Parish School. Plaintiff was an altar boy and a choir singer at Holy Cross Parish at all relevant times discussed herein.

9. From approximately 1970 to approximately 1973, when Plaintiff was approximately eleven to fourteen years of age, Father Prochaski sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff approximately ten or more times on Holy Cross Parish property in violation of the laws of the State of New York.

10. Father Prochaski used his position at Holy Cross Parish, which granted him access to minors, to gain access to the minor Plaintiff and to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff.

Defendants' Responsibility for the Abuse Committed by Father Prochaski

11. At all times material hereto, Father Prochaski was under the management, supervision, employ, direction and/or control of Defendants Diocese of Brooklyn and Holy Cross Parish.

12. Through his positions at, within, or for Defendants Diocese of Brooklyn and Holy Cross Parish, Father Prochaski was put in direct contact with Plaintiff.

13. Father Prochaski used his position at, within, or for, Defendants Diocese of Brooklyn and Holy Cross Parish and the implicit representations made by them about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create opportunities to be alone with, and sexually touch, Plaintiff.

14. Defendants Diocese of Brooklyn and Holy Cross Parish had the duty to reasonably manage, supervise, control and/or direct priests who served at the Diocese of Brooklyn and Holy Cross Parish, and specifically, had a duty not to aid pedophiles such as Father Prochaski by assigning, maintaining, and/or appointing them to positions with access to minors.

15. Defendants Diocese of Brooklyn and Holy Cross Parish knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Prochaski, who sexually abused, sexually assaulted, and/or had sexual contact with Plaintiff.

16. Defendants Diocese of Brooklyn and Holy Cross Parish had a duty to the Plaintiff to properly supervise their agents to ensure that said agents did not use their positions with Defendants Diocese of Brooklyn and Holy Cross Parish as a tool for grooming and assaulting vulnerable children. Defendants Diocese of Brooklyn and Holy Cross Parish knew or should have known that Father Prochaski used his position at Holy

Cross Parish to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

17. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Prochaski's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

18. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Prochaski's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

19. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

20. Defendants Diocese of Brooklyn and Holy Cross Parish at all relevant times indicated that minors present at Holy Cross Parish would be physically safe while in the presence of priests assigned to Holy Cross Parish. Defendants Diocese of Brooklyn and Holy Cross Parish entered into an express and/or implied duty to provide that when Plaintiff was a minor left in the presence of a priest assigned to, hired by, retained by, directed by, and/or under the supervision of Defendants Diocese of Brooklyn and Holy Cross Parish, Plaintiff would be kept reasonably safe and that that priest would not sexually abuse Plaintiff.

21. Defendants Diocese of Brooklyn and Holy Cross Parish owed a duty of

care to all minors, including Plaintiff, who were likely to come into contact with Father Prochaski or under the influence or supervision of Father Prochaski, to ensure that Father Prochaski did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

22. Defendants Diocese of Brooklyn and Holy Cross Parish knew or should have known of Father Prochaski's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

23. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

24. Father Prochaski sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff while he was a priest and agent of Defendants Diocese of Brooklyn and Holy Cross Parish.

25. Defendants Diocese of Brooklyn and Holy Cross Parish negligently hired, retained, directed, and/or supervised Father Prochaski, as they knew or should have known that Father Prochaski posed a threat of sexual abuse to minors.

26. Defendants Diocese of Brooklyn and Holy Cross Parish were negligent in failing to properly supervise Father Prochaski.

27. At all times material hereto, Defendants Diocese of Brooklyn's and Holy Cross Parish's actions were willful, wanton, malicious, negligent, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

28. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

29. By reason of the foregoing, Defendants Diocese of Brooklyn and Holy Cross Parish are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION
Negligence/Gross Negligence

30. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

31. At all times material hereto, with regard to the allegations contained herein, Father Prochaski was under the supervision, employ, direction and/or control of Defendants Diocese of Brooklyn and Holy Cross Parish.

32. Defendants Diocese of Brooklyn and Holy Cross Parish owed Plaintiff, at the relevant times a minor, a duty to protect Plaintiff from Father Prochaski's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Prochaski's misconduct.

33. Defendants Diocese of Brooklyn and Holy Cross Parish knew, or were negligent in not knowing, that Father Prochaski posed a threat of sexual abuse to minors.

34. The acts of Father Prochaski described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants Diocese of Brooklyn and Holy Cross Parish.

35. Defendants Diocese of Brooklyn's and Holy Cross Parish's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damages set forth herein at length.

36. Defendants Diocese of Brooklyn and Holy Cross Parish:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Father Prochaski;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious

conduct by persons, whether or not their servants and/or agents and/or employees, with instrumentalities under their control; and

- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

37. At all times material hereto, Defendants Diocese of Brooklyn's and Holy Cross Parish's actions were willful, wanton, malicious, negligent, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

38. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

39. By reason of the foregoing, Defendants Diocese of Brooklyn and Holy Cross Parish jointly, severally, and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION

Breach of Non-Delegable Duty

40. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

41. Plaintiff, when he was a minor, was placed in the care and supervision of Defendants Diocese of Brooklyn and Holy Cross Parish for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in educational, youth, and recreational activities. There existed a non-delegable duty of trust between Plaintiff and the Defendants.

42. Plaintiff was a vulnerable minor when placed within the care of Father Prochaski, an agent of Defendants Diocese of Brooklyn and Holy Cross Parish.

43. At all times material hereto, Father Prochaski was under the supervision, employ, direction and/or control of the Defendants Diocese of Brooklyn and Holy Cross Parish.

44. As a consequence, Defendants Diocese of Brooklyn and Holy Cross Parish were in the best position to prevent Father Prochaski's sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Father Prochaski's sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

45. By virtue of the fact that Plaintiff was sexually abused as a minor entrusted to the care of Defendants Diocese of Brooklyn and Holy Cross Parish, Defendants breached their non-delegable duty to Plaintiff.

46. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

47. By reason of the foregoing, Defendants Diocese of Brooklyn and Holy Cross Parish jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION

Breach of Fiduciary Duty

48. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

49. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Brooklyn and Holy Cross Parish. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the Defendants Diocese of Brooklyn and Holy Cross Parish not only as a parishioner, but also as an altar boy and choir singer. This entrustment of the Plaintiff to the care and supervision of Defendants Diocese of Brooklyn and Holy Cross Parish, while the Plaintiff was a minor child, required Defendants Diocese of Brooklyn and Holy Cross Parish to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect Plaintiff due to his infancy and vulnerability.

50. Pursuant to their fiduciary relationship, Defendants Diocese of Brooklyn and Holy Cross Parish were entrusted with the well-being, care, and safety of Plaintiff.

51. Pursuant to their fiduciary relationship, Defendants Diocese of Brooklyn and Holy Cross Parish assumed a duty to act in the best interests of Plaintiff.

52. Defendants Diocese of Brooklyn and Holy Cross Parish breached their fiduciary duty to Plaintiff.

53. At all times material hereto, Defendants Diocese of Brooklyn's and Holy Cross Parish's actions and/or inactions were willful, wanton, malicious, negligent, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

54. As a direct result of said conduct, Plaintiff has suffered the injuries and damages described herein.

55. By reason of the foregoing, Defendants Diocese of Brooklyn and Holy Cross Parish are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

56. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

57. As described above, the actions of Defendants Diocese of Brooklyn and Holy Cross Parish, as well as their agents, servants, and/or employees, were conducted in a negligent and/or grossly negligent manner.

58. Defendants Diocese of Brooklyn's and Holy Cross Parish's actions endangered Plaintiff's safety and caused Plaintiff to fear for his own safety.

59. As a direct and proximate result of Defendants Diocese of Brooklyn's and Holy Cross Parish's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described

herein, including but not limited to, mental and emotional distress.

60. By reason of the foregoing, Defendants Diocese of Brooklyn and Holy Cross Parish are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION

Breach of Duty *in Loco Parentis*

61. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

62. While he was a minor, Plaintiff was entrusted by his parents to the control of Defendants Diocese of Brooklyn, and Holy Cross Parish, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. These Defendants owe—and owed—a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

63. Defendants Diocese of Brooklyn and Holy Cross Parish breached their duty to act *in loco parentis*.

64. At all times material hereto, Defendants Diocese of Brooklyn's and Holy Cross Parish's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

65. As a direct result of Defendants Diocese of Brooklyn's and Holy Cross Parish's conduct, Plaintiff has suffered the injuries and damages described herein.

66. By reason of the foregoing, Defendants Diocese of Brooklyn and Holy Cross Parish, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 1, 2019
New York, New York

Respectfully Submitted,

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